

1 ROUGH DRAFT

2 UNITED STATES DISTRICT COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 Case No. 07CV3782

5 - - - - -x

6 MARK KAPITI,

7 Plaintiff,

8 -against-

9 RAYMOND W. KELLY, in his official
Capacity as Commissioner of the New York
10 City Police Department, Property Clerk,
NEW YORK CITY POLICE DEPARTMENT, and THE
11 CITY OF NEW YORK,

12 Defendants.

13 - - - - -x

14 100 Church Street
New York, New York

15 May 28, 2008
16 10:40 a.m.

17

18 DEPOSITION of GEORGE TRIFFON, a
19 non-party witness in the above-entitled
20 action, held at the above time and place,
21 taken before Brian Glickman, a Shorthand
22 Reporter and Notary Public of the State of
23 New York, pursuant to the Federal Rules of
24 Civil Procedure, Notice and stipulations
25 between Counsel.

1 ROUGH DRAFT

2 A P P E A R A N C E S:

3

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BY: DAVID HAZAN, ESQ.

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PHILIP FRANK, ESQ.

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1 ROUGH DRAFT

2 S T I P U L A T I O N S

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4 IT IS HEREBY STIPULATED BY AND BETWEEN
5 the Parties hereto through their
6 respective counsel that all objections
7 except as to the form of the question
8 shall be reserved to the time of trial;

9 IT IS FURTHER STIPULATED by and
10 between the parties hereto through their
11 respective counsel that sealing,
12 certification and filing shall be and the
13 same are hereby waived;

14 IT IF FURTHER STIPULATED that the
15 within examination may be signed and sworn
16 to before any Notary Public with the same
17 force and effect as if signed and sworn to
18 before this Court.

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1 ROUGH DRAFT

2 G E O R G E T R I F F O N, the witness
3 herein, having been sworn by the Notary
4 Public, was examined and testified as
5 follows:

6 EXAMINATION BY

7 MR. KESSLER:

8 Q Would you please state your name
9 for the record.

10 A George Triffon.

11 Q Please state your business
12 address for the record.

13 A 1 Police Plaza, New York, New
14 York 10038.

15 Q Good morning, Sergeant.

16 A Good morning.

17 Q Nice to see you.

18 A Likewise.

19 Q Have you ever been deposed
20 before?

21 A Once before.

22 Q Have you ever testified in
23 court?

24 A I have.

25 Q How many times, approximately?

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2 A Would you specify what kind of
3 court?

4 Q You tell me.

5 A Traffic court, more times than I
6 can count.

7 Q Criminal cases?

8 A A criminal case in front of the
9 grand jury once.

10 Q I'll give you a brief rundown of
11 what we're going to do today. You know
12 why you're here, you know what case this
13 is about?

14 MR. HAZAN: Objection.

15 You can answer.

16 A I know the name. That is it.

17 Q I have some questions to ask you
18 about a pending case that my client, Mark
19 Kapiti, is a plaintiff in. I would
20 appreciate if you would answer the
21 questions. If you don't understand any of
22 the questions, feel free to ask me. If
23 you have a question you want to ask your
24 attorney, feel free to do so. And if for
25 any reason you want to stop the proceeding

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2 please let me know. Hopefully I'll get
3 you out of here relatively soon.

4 A little background first.

5 What's your education? Where did you go
6 to college?

7 A I went to John Jay College of
8 Criminal Justice for a bachelor's degree,
9 and I went to New York Law School for my
10 JD, for Juris Doctor.

11 Q When did you graduate from John
12 Jay?

13 A 1996.

14 Q New York Law School?

15 A 2007.

16 Q Who was your favorite teacher?

17 MR. HAZAN: Objection.

18 Q In between 1999 and 2004, what
19 were you doing as employment?

20 A Between 1999 and 2004?

21 Q From the time you graduated from
22 John Jay until you started law school.

23 A The bulk of that time was spent
24 as a police officer in the New York City
25 Police Department.

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2 Q While you were attending New
3 York Law School, were you still employed
4 by the New York City Police Department?

5 A I was.

6 Q When were you admitted to the
7 New York bar?

8 A In March of 2008.

9 Q Congratulations.

10 A Thank you.

11 Q What is your title with the NYPD
12 now?

13 A Presently I'm a sergeant for the
14 New York City Police Department.

15 Q Out of where?

16 A I work in the First Precinct.

17 Q How long have you been with the
18 NYPD?

19 A I was first hired in April of
20 1997.

21 Q What did you do from 1997 until
22 present with the NYPD?

23 MR. HAZAN: Objection to form.

24 Q You can answer.

25 A Various patrol functions and

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2 ultimately then I was transferred to the
3 legal bureau.

4 Q When were you transferred to
5 legal?

6 A Summer of 2005.

7 Q So in 2006, where were you
8 employed within the NYPD?

9 A I was working for the Civil
10 Enforcement Unit which is a division of
11 the legal bureau.

12 Q Where is that?

13 A The physical office itself?

14 Q Yes.

15 A Is located at 2 Lafayette Street
16 in New York City, New York.

17 Q Is that where your office was?

18 A Correct.

19 Q Did you review any documents
20 before you came to be deposed today?

21 MR. HAZAN: Objection to the
22 extent that he reviewed documents with
23 his attorney that would be privileged,
24 but otherwise he can answer the
25 question.

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2 MR. KESSLER: Not whether he
3 reviewed documents. I didn't ask
4 anything yet. I'm just asking if he
5 reviewed documents.

6 A Yes.

7 Q Did you bring any with you?

8 A No.

9 Q Did you talk with anyone about
10 the case prior to today's deposition?

11 A Yes.

12 Q Who?

13 A My attorney.

14 Q Would that be Mr. Hazan?

15 A Correct.

16 Q Anyone else you spoke with?

17 A No.

18 Q Did you speak with anyone within
19 the police department about this case
20 before testifying?

21 A No, other than to the extent
22 that I told my former supervisor at CEU
23 that I would be deposed about the case.
24 But that's the extent.

25 Q Did you discuss the substance of

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2 the case with him?

3 A No.

4 Q For the purpose of today's
5 deposition, is Mr. Hazan your attorney?

6 A Yes.

7 Q Now, you are not named as a
8 defendant in the caption and yet you have
9 been provided to me for a deposition, do
10 you know why?

11 A No, I don't.

12 Q When did you talk about the case
13 with Mr. Hazan prior to coming today?

14 A Tuesday, the 20th of this month.

15 Q That would be last week?

16 A Last Tuesday, correct.

17 Q Did he show you any documents?

18 A Yes.

19 Q What documents did he show you?

20 MR. HAZAN: Objection.

21 MR. KESSLER: If they are part
22 of the file, I'll ask that they be
23 produced.

24 MR. HAZAN: It's attorney-client
25 privilege what I showed to my client,

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2 what documents I showed to my client
3 in preparation for this, it's also
4 work product privilege.

5 MR. KESSLER: We're going to
6 mark that for a ruling.

7 Q Did you make any notes in
8 preparation for the deposition today?

9 A No.

10 Q Let's turn to your work with the
11 NYPD. Right now you indicated you are
12 with the First Precinct?

13 A Correct.

14 Q When did you leave the Civil
15 Enforcement Unit?

16 A In January of 2008.

17 Q So you were there from summer of
18 '05 to January of '08?

19 A Correct.

20 Q Focussing on your time with the
21 Civil Enforcement unit, other than
22 yourself, how many people worked there
23 within the unit?

24 MR. HAZAN: Objection to form.

25 Q You can answer.

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2 A I would estimate about 20.

3 Q Of those approximately 20, are
4 they all police officers?

5 A No.

6 Q How many of them are police
7 officers?

8 A An estimate, half. About ten.

9 Q And of those who are not police
10 officers, are the others attorneys?

11 A An estimate about eight out of
12 the remaining ten.

13 Q And the remaining two would be
14 what?

15 A Neither police officers nor
16 attorneys.

17 Q Secretarial or support staff?

18 A Correct.

19 Q Of the police officers there,
20 how many have legal degrees, if you know?

21 A I don't know. An estimate,
22 about half.

23 Q What types of cases does the
24 Civil Enforcement Unit handle?

25 MR. HAZAN: Objection to form.

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2 A Forfeiture, civil forfeiture
3 cases.

4 Q Is that all?

5 A To my knowledge.

6 Q The civil forfeiture cases that
7 they handle, is there a statute that
8 governs those proceedings?

9 MR. HAZAN: Objection.

10 A There is applicable law, I
11 couldn't tell you what the statute is
12 offhand.

13 Q In January of '06, approximately
14 how many cases did you handle, what was
15 your case load?

16 A I'll need you to be more
17 specific in terms of my role in certain
18 cases.

19 Q Well, why don't you tell me
20 then, what did you do in the Civil
21 Enforcement Unit in January of '06?

22 MR. HAZAN: Objection to form.

23 A I can't recall specifically
24 January of '06.

25 Q In general, during your time in

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2 civil enforcement what were your duties?

3 MR. HAZAN: Objection to form.

4 A My function was primarily

5 administrative.

6 Q Meaning what?

7 A Sending mailings, preparing in

8 office memos. As well as I was a

9 representative for the Police Department

10 at retention hearings at the office of

11 administrative trials and hearings.

12 Q We call those OATH hearings?

13 A We do.

14 Q And those would have been your

15 duties during the time you were at civil

16 enforcement, correct?

17 MR. HAZAN: Objection.

18 A During my entire time at civil

19 enforcement?

20 Q Yes.

21 A I will not say that that's an

22 all inclusive or exhaustive list, to the

23 best of my memory that is what my function

24 was.

25 Q Can we say in 2006 those were

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2 your functions while in civil enforcement?

3 MR. HAZAN: Objection to form.

4 A Again, I can't say with
5 certainty that was exactly what I was
6 doing, but generally speaking, my time at
7 civil enforcement that's what I was doing.

8 Q How many seizure cases have you
9 handled or been assigned during your time
10 at civil enforcement?

11 MR. HAZAN: Objection to form.

12 A The office itself handles about
13 4,000 a year. My part in each of them
14 varies depending on the case.

15 Q From 2005 to the present, or to
16 January of '08, was that number 4,000
17 constant?

18 MR. HAZAN: Objection to form.

19 A Explain what you mean by
20 constant.

21 Q Was it 5,000 one year, 2,000
22 another year, 3,000 a third year, or was
23 it approximately 4,000 every year?

24 A I couldn't say, 4,000 is my
25 guess, an estimate rather.

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2 Q How are you coming up with that
3 number? That's what I'm asking.

4 A The cases are numbered, the
5 highest numbers I can recall in any given
6 year I worked there were in the 4,000
7 range.

8 Q And do they start at zero every
9 year?

10 A They do, start at one rather.

11 Q Correct. Did you ever conduct
12 any hearings under the administrative code
13 in the Supreme Court New York County while
14 you were in the civil enforcement unit?

15 MR. HAZAN: Objection to form.

16 A I'm sorry. Repeat the question
17 for me.

18 Q Did you ever conduct any
19 hearings under the administrative code in
20 Supreme Court New York County while you
21 were in civil enforcement?

22 A I did not conduct any hearings
23 in Supreme Court of New York County.

24 Q You have never?

25 A No.

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2 Q In addition to the term OATH
3 hearing, how else are they referred to,
4 are they called Krimstock hearings?

5 A I have heard that term applied
6 to them.

7 Q On average during your time with
8 civil enforcement, how many OATH hearings
9 or Krimstock hearings would you handle on
10 a typical day?

11 MR. HAZAN: Objection to form.

12 A I was typically assigned several
13 per week. They did not all go to hearing.

14 Q How many would go to hearing on
15 average?

16 MR. HAZAN: Objection to form.

17 A I couldn't say, I do not know.

18 Q Most?

19 MR. HAZAN: Objection.

20 A Define "most" for me.

21 Q Well, let's talk about the
22 resolution of the Krimstock case. You
23 said not all of them went to a hearing,
24 correct?

25 A Correct.

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2 Q Those that did not go to a
3 hearing, what would happen?

4 MR. HAZAN: Objection.

5 A Typically the ones that did not
6 go to hearing would be settled with the
7 titled owner of the car if, in fact, it
8 was a car at issue.

9 Q Was there anything else other
10 than cars that you dealt with?

11 A Personally, no.

12 Q And that settlement with the
13 owner would come downtown on Rector Street
14 or prior to appearing at the OATH hearing?

15 MR. HAZAN: Objection to form.

16 A Both depending on the case, both
17 or either I should say.

18 Q Approximately to your best
19 estimate, how many OATH hearings did you
20 conduct while at civil enforcement?

21 MR. HAZAN: Objection to form.

22 A I don't know.

23 Q Ten?

24 A At least.

25 Q Fifty?

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2 A I couldn't say.

3 Q Between 10 and 50,
4 approximately?

5 A It would be an estimate, I
6 couldn't say for sure.

7 Q Would that be a fair estimate
8 for a range?

9 A That would be a fair estimate
10 for a range.

11 Q Okay. Of the total number of
12 cases that you handled, approximately how
13 many resulted in the return of the vehicle
14 to the owner?

15 A Again, I can't say how many
16 cases I handled and how many settled and
17 therefore, I certainly couldn't estimate
18 how many were given back.

19 Q Do you know as far as the office
20 as a whole, you used the figure 4,000
21 before, of those 4,000 cases in a year,
22 how many resulted in the return of the
23 vehicle to the owner?

24 MR. HAZAN: Objection.

25 A I couldn't say. I do not know.

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2 Q Were the procedures used for
3 Krimstock hearings constant or consistent
4 during the time that you were at civil
5 enforcement --

6 MR. HAZAN: Objection.

7 Q -- or did they change at some
8 point?

9 A You would have to be more
10 specific, I couldn't say.

11 Q Were there any policies
12 governing the OATH hearings that you
13 conducted?

14 MR. HAZAN: Objection.

15 A I really couldn't say. I mean,
16 each case was handled individually.

17 MR. KESSLER: Off the record.

18 (Discussion off the record.)

19 Q Back on the record.

20 When you say that each case was
21 handled individually, were there any rules
22 that governed your actions as a member of
23 the civil enforcement unit that you had to
24 abide by in handling the case?

25 MR. HAZAN: Objection.

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2 A You'd have to clarify what you
3 mean by "rules".

4 Q If I did that, I'd be telling
5 you what I'm thinking about, but, is there
6 anything in the administrative code that
7 governed your proceedings, is there
8 anything under Krimstock that governed
9 your actions, is there anything in the
10 property clerk manual that governed your
11 actions?

12 MR. HAZAN: Objection to form.

13 A I mean, I can only answer based
14 on my memory and I don't recall any
15 specific rules or procedures that you are
16 referring to.

17 Q That's all I'm asking for.

18 When you were in civil
19 enforcement, did you have a supervisor?

20 A I did.

21 Q Who was that?

22 A The bulk of the time I was there
23 was a woman named Eva Marie Russo.

24 Q What was Ms. Russo's position in
25 the unit?

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2 A Her job title is deputy managing
3 attorney.

4 Q Is there someone above her?

5 A There was.

6 Q Who is that?

7 A The executive officer of the
8 unit, Robert Fodera.

9 Q What were Mr. Fodera's duties at
10 the time?

11 MR. HAZAN: Objection.

12 A I couldn't say he was my
13 supervisor, supervisor, that's the extent
14 of my knowledge.

15 Q Did you ever deal with him
16 directly?

17 A Yes.

18 Q Why, why would you deal with him
19 as opposed to your immediate supervisor?

20 A It is a small office. I
21 couldn't say specifically.

22 Q And were there any decisions
23 that Mr. Fodera would make that would be
24 beyond the scope of Ms. Russo's job title?

25 MR. HAZAN: Objection.

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2 A I couldn't say.

3 Q Did Mr. Fodera have a
4 supervisor?

5 A Yes.

6 Q Who was that?

7 A That would be the commanding
8 officer of the unit, Robert Messner.

9 Q Is Mr. Messner a police officer?

10 A No.

11 Q Is Mr. Fodera?

12 A No.

13 Q Are they both attorneys?

14 A To my knowledge.

15 Q And what about Ms. Russo, is she
16 a police officer?

17 A No.

18 Q Is she an attorney?

19 A As far as I know.

20 Q Did Mr. Messner have a
21 supervisor?

22 A I couldn't say who his
23 supervisor was.

24 Q Did you ever deal with someone
25 named John Curry?

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2 A Sure.

3 Q What was his title?

4 A I believe he was another
5 executive officer.

6 Q Similar to?

7 A Robert Fodera.

8 Q All right. As far as you know,
9 has the structure of the Civil Enforcement
10 Unit changed since you've left?

11 A I don't know.

12 Q Let's focus on this case. Do
13 you have any independent recollection as
14 to what happened in this case?

15 A Specifically?

16 Q About the vehicle seizure.

17 A I have no independent
18 recollection of this case.

19 Q Other than you being called to
20 testify today, do you recall anything out
21 of the ordinary or unusual in the way your
22 office handled this case?

23 MR. HAZAN: Objection to form.

24 A I do not recall anything.

25 Q What role did you play with

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2 regard to this case, the Kapiti case?

3 A Again, I have no independent
4 recollection of my role.

5 Q Do you recall when you became
6 involved in it?

7 A I do not.

8 Q Do you remember when the vehicle
9 was seized?

10 A I do not.

11 MR. KESSLER: Off the record.

12 (Discussion off the record.)

13 MR. KESSLER: Could you mark
14 these, please, as Plaintiff's 1
15 through 11.

16 (Marked Plaintiff's Exhibits 1
17 through 11 for identification as of
18 today's date.)

19 MR. HAZAN: The witness requests
20 a copy of the transcript from
21 plaintiff pursuant to the federal
22 rules so that he can review and
23 correct it for any errors that may be
24 contained in the transcript.

25 MR. KESSLER: I'm still waiting

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2 for mine, by the way.

3 MR. HAZAN: We haven't gotten it
4 yet.

5 MR. KESSLER: Really.

6 Q Okay. Do you remember when Mr.
7 Kapiti's vehicle was seized?

8 A I don't.

9 Q Let me show you what has been
10 marked as Plaintiffs' Exhibit 3, and tell
11 me if this refreshes your recollection?

12 MR. HAZAN: As to what?

13 Q As to when Mr. Kapiti's vehicle
14 was seized, that was my question.

15 A It does not refresh my
16 recollection. The letter does seem to
17 indicate when it was seized, but it does
18 not refresh any independent recollection
19 on my part.

20 Q Let's talk about the letter. Is
21 that your signature at the bottom?

22 A It is.

23 Q And this document, do you see on
24 the bottom right is Bates stamped NYC 14
25 that was produced by the City in discovery

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2 in this case? We'll talk about this a
3 little more in a minute. Hold onto it.
4 This indicates that April 23rd, '06 was
5 the date the vehicle was seized; is that
6 correct?

7 A That's what the letter reads,
8 yes -- excuse me, 2005.

9 Q Excuse me April 23, 2005?

10 A Yes.

11 Q Let me refer you to Plaintiff's
12 Exhibit 1, it is a two-page document.
13 Could you tell me what it is, sir?

14 A It appears to be a printout of
15 the computer base tracking system we had
16 at the office civil enforcement.

17 Q You're using past tense. Is it
18 currently used?

19 A My knowledge of it is only from
20 the past.

21 Q So is this the type of tracking
22 system that was used during your tenure at
23 the Civil Enforcement Unit?

24 MR. HAZAN: Objection to form.

25 A I'm not familiar with this

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2 format, but it appears to be a printout of
3 the system that we used at the time I was
4 there.

5 Q Have you ever seen that document
6 before?

7 A I couldn't say for certain.

8 Q You are not sure whether you've
9 seen it before?

10 A No, I might have seen -- I've
11 seen something in this format, I can't say
12 for certain this was the document, that's
13 all.

14 Q Just take a look at the document
15 for a minute.

16 A Anything in particular I should
17 be looking for?

18 Q The date of the seizure.

19 A Okay.

20 Q Does this tell you what date Mr.
21 Kapiti's vehicle was seized?

22 MR. HAZAN: Objection to form.

23 You can answer.

24 A It does not, as far as I can
25 tell.

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2 Q Does it have his arrest date?

3 A It does.

4 Q Does it have a seizure number?

5 A It does.

6 Q Were you assigned to this case?

7 A It indicates I was assigned as
8 the hearing attorney, which is a slight
9 misnomer. What it really means is, I was
10 assigned as the representative for the
11 police department if this case were to
12 have gone to an OATH hearing.

13 Q Now, you are looking on the
14 left-hand side in the middle of the first
15 page, correct?

16 A Correct.

17 Q And next to the term hearing
18 attorney, ATTY, it has your last name,
19 correct?

20 A It does.

21 Q And that's the misnomer that you
22 indicated?

23 A The word attorney is a misnomer
24 because at the time I was not an attorney,
25 I was simply a representative of the

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2 police department at these hearings.

3 Q Would it be more accurate to
4 call you a hearing officer?

5 MR. HAZAN: Objection.

6 A It would be more accurate to not
7 call me an attorney.

8 Q Now, underneath Hearing Attorney
9 Triffon, it says hearing DISP, do you see
10 that?

11 A Yes.

12 Q What does that refer to, what
13 does that line refer to?

14 MR. HAZAN: Objection to form.

15 A Again, I'm simply interpreting
16 the page in front of me. It appears to
17 say hearing disposition, which indicates
18 the disposition of the hearing.

19 Q What does it say next to it?

20 A Needed by DA as evidence dash
21 no.

22 Q What does that mean?

23 A To the best of my recollection,
24 it means that no hearing was going to be
25 conducted because the vehicle was needed

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2 as evidence by the district attorney.

3 Q Let's run through that one more
4 time. It says here needed by DA as
5 evidence dash no, correct?

6 A Correct. That's what I see.

7 Q And that, to you, means what?

8 MR. HAZAN: Objection. Asked
9 and answered.

10 Q Is it needed by the DA as
11 evidence?

12 A This to me indicates that it is
13 needed by the DA as evidence.

14 Q That it is needed by the DA as
15 evidence?

16 A Correct.

17 Q And what on here indicates that
18 to you?

19 A The phrase needed by DA as
20 evidence.

21 Q And the phrase next to it, no?

22 A Correct. That indicates no
23 hearing would be conducted.

24 Q Do you see on the right-hand
25 side hearing accepted, the middle of the

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2 page toward the center to the right?

3 A Yes.

4 Q Do you see the date underneath
5 that?

6 A Yes.

7 Q What does that represent to you?

8 MR. HAZAN: Objection to form.

9 You can answer.

10 A Simply that a hearing was
11 accepted and that the acceptance letter,
12 for lack of a better word, was received on
13 5-23-06.

14 Q The column to the right, hearing
15 notice, what does that mean?

16 A It indicates the date that the
17 notice of the hearing was sent.

18 Q Are you sure of that?

19 A No, I'm simply stating based on
20 what I'm looking at right now what it
21 seems to indicate.

22 Q And so that I'm clear, this is
23 the first time you're seeing this
24 document, correct?

25 MR. HAZAN: Objection.

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2 Q To the best of your
3 recollection?

4 MR. HAZAN: Objection.

5 A It looks familiar to me, but I
6 can't say with certainty that I've looked
7 at this exact document.

8 Q Have you seen documents similar
9 to this one on other cases?

10 A The format looks familiar to me,
11 but other than that -- let me rephrase.
12 As I stated in the beginning, this appears
13 to be the printout of a format that I'm
14 familiar with from a computer system that
15 we used at the office to track these
16 cases.

17 Q If this represented your case,
18 would you have been the person who input
19 the information?

20 MR. HAZAN: Objection.

21 A No. Not necessarily.

22 Q Who would input the information
23 on a case of yours?

24 MR. HAZAN: Objection to form.

25 A I don't know.

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2 Q So getting back to the hearing
3 notice, if I recall correctly, your
4 testimony is that is the date that
5 represents the date that the hearing
6 notice was sent out to the owner?

7 MR. HAZAN: Objection to form.

8 A I cannot testify with certainty
9 that this indicates the date that anything
10 was sent out. All I can say is that this
11 appears to be the date the hearing notice
12 would have been sent out based on the
13 document in front of me.

14 Q Okay. You see on the left-hand
15 side again, where it says classification,
16 do you see that line?

17 A Yes.

18 Q What does it say next to it?

19 A Forfeiture.

20 Q What does that mean?

21 MR. HAZAN: Objection to form.

22 A Define the term.

23 Q No, you don't need to define the
24 term for me. What does it mean that this
25 is classified as forfeiture?

1 ROUGH DRAFT

2 MR. HAZAN: Objection to form.

3 A It's just an in-house -- in
4 office classification of the cases we
5 handled or we would get.

6 Q As opposed to what, what else
7 could it be classified as?

8 A I don't recall.

9 Q Could it mean that the vehicle
10 is being held for forfeiture?

11 MR. HAZAN: Objection.

12 A I can't testify as to what it
13 could mean if I don't recall what it
14 means.

15 Q On the top left fourth line from
16 the top, there is an asterisk and it says
17 the word "forfeiture" followed by the
18 number sign, do you see that?

19 A I do.

20 Q There is no number next to the
21 number sign; is that correct?

22 A That's correct based on what I
23 have in front of me.

24 Q Do you know why?

25 A I do not.

1 ROUGH DRAFT

2 Q If the car is being classified
3 as a forfeiture, would there usually be a
4 forfeiture number assigned to it?

5 MR. HAZAN: Objection.

6 A I don't know.

7 Q The following line down, next to
8 the word "crime" it says "fireworks," do
9 you know what that means?

10 MR. HAZAN: Objection.

11 Q What does the term refer to in
12 this case, why is the word fireworks
13 there?

14 MR. HAZAN: Objection.

15 A Again, I couldn't say.

16 Q You have no independent
17 recollection of this case, correct?

18 A Of this specific case, no.

19 Q Do you know if there was a
20 criminal proceeding related to Mr. Kapiti
21 or his vehicle?

22 A I don't have any independent
23 recollection of it.

24 Q Have you ever met Mr. Kapiti?

25 A Not that I can recall.

1 ROUGH DRAFT

2 Q Did you ever speak to him?

3 A Not that I can recall.

4 Q Take a look if you will at the
5 portion of the document starting with the
6 word notes, do you see that?

7 A I do.

8 Q There are a few things that are
9 redacted, other than that it appears to be
10 information that was typed in, correct?

11 A It appears to be information
12 that was typed in, yes, correct.

13 Q And it goes to the second page
14 of the document; is that right?

15 A I'm sorry.

16 Q It continues onto the second
17 page of the document?

18 A It appears to, yes.

19 Q If you would look at the entries
20 on Plaintiff's Exhibit 1, what is the
21 order? Let me lead for a bit, is it fair
22 to say that the entries are in reverse
23 chronological order, meaning the entry to
24 the top right next to notes is the most
25 recent date and the entry at the bottom on

1 ROUGH DRAFT

2 page two is the oldest date?

3 MR. HAZAN: Objection to form.

4 A Based exclusively on the time
5 and date stamps that appear at the
6 beginning of each entry, I would say that
7 is a correct statement.

8 Q So the first entry on this, on
9 Plaintiff's Exhibit 1 would be the last
10 entry on page two?

11 MR. HAZAN: Note my objection to
12 form.

13 Q Is that correct?

14 A I would agree with that
15 assessment.

16 Q Okay. Look at the earliest
17 entry which would be the full entry on
18 page two, if you would, did you input that
19 entry?

20 A I have no independent
21 recollection of making this entry.

22 Q Take a look at the last line
23 where it says Honda Finance will take
24 possession, Honda signed HH file to basket
25 for approval, GT. Is GT you?

1 ROUGH DRAFT

2 A GT are my initials.

3 Q Would that mean that you put
4 this information into the computer?

5 A It is an indication that I made
6 that entry.

7 Q You have no independent
8 recollection of it though?

9 A I have no independent
10 recollection and it is not certain, but it
11 is an indication that I made that entry.

12 Q Do you have any recollection of
13 why you would have put this information
14 into the computer?

15 A None whatsoever.

16 Q And the date that this was
17 entered was what?

18 A Reading from the page it says
19 06-02-2006.

20 Q Other than the date and the time
21 stamp on this document, is it fair to say
22 you have no independent recollection of
23 this?

24 A Including the time and date, I
25 have no independent recollection of this.

1 ROUGH DRAFT

2 Q Correct?

3 A Right.

4 Q Do you have any recollection of
5 speaking with Honda?

6 A I do not.

7 Q Or anybody at Honda?

8 A I do not.

9 Q Let me show you what has been
10 marked Plaintiffs' Exhibit 10, tell me if
11 you recognize it?

12 A I don't recognize this specific
13 document, but again, the format looks
14 familiar to me.

15 Q Have you ever seen that document
16 before, to the best of your recollection?

17 A I don't remember.

18 Q Let me show you what has been
19 marked Plaintiff's Exhibit 11. The same
20 question, have you ever seen that before?

21 A I have not.

22 Q Do you have any recollection of
23 seeing that document?

24 A No recollection whatsoever.

25 Q Okay. On Plaintiff's

1 ROUGH DRAFT

2 Exhibit 11, do you have any recollection
3 of the substance of that letter?

4 MR. HAZAN: Objection to form.

5 A No.

6 Q Let's go back to Plaintiff's 1.
7 Can you tell me, Sergeant Triffon, if the
8 hearing for Mr. Kapiti ever took place?

9 MR. HAZAN: Objection to form.

10 Q The Krimstock hearing?

11 A I have no independent
12 recollection of whether or not it took
13 place.

14 Q Does this document help you?

15 MR. HAZAN: Objection to form.

16 A The document doesn't help my
17 independent recollection.

18 Q Does it indicate if a hearing
19 was held?

20 A I don't see any indication on
21 here as to whether or not a hearing was
22 held.

23 Q Does it indicate whether a
24 hearing was not held?

25 A That's really the same question.

1 ROUGH DRAFT

2 Q Only in reverse, but I'm just
3 making sure that it doesn't say anything
4 about whether a hearing was held or not,
5 correct?

6 MR. HAZAN: Objection to form.

7 A The hearing disposition line we
8 referred to before gives some indication
9 that no hearing was held.

10 Q That's the word no at the end of
11 that line?

12 A Correct.

13 Q Does it indicate why a hearing
14 was not held?

15 A Reading from the page, it states
16 needed by DA as evidence.

17 Q Is that why a hearing was not
18 held?

19 A I can't say for sure.

20 Q On the bottom of page one
21 continuing onto page two, there's an entry
22 dated 6-5-06, do you see that?

23 A I do.

24 Q The June 5th date is the same
25 date as is listed under hearing notice, do

1 ROUGH DRAFT

2 you see that?

3 A I do.

4 Q Why is that, if you know?

5 A I don't know.

6 Q Now, the document that I showed
7 you that was People's 10, you said you've
8 seen documents like this before?

9 A The format is familiar to me.

10 Q What is it, what type of
11 document is it?

12 MR. HAZAN: Objection to form.

13 Q And so the record is clear, this
14 is Bates stamped NYC 127. It's a document
15 produced by the City during discovery.

16 A It appears to be an agreement
17 similar to those generated by civil
18 enforcement.

19 Q Is there a term for this
20 agreement?

21 A It appears to be a hold harmless
22 agreement.

23 Q And it is a hold harmless
24 agreement between who and who?

25 MR. HAZAN: Objection to form.

1 ROUGH DRAFT

2 A I can't say other than to read
3 from the page it appears to have Honda
4 Financial indicated on there.

5 Q And the other party would be the
6 New York City Police Department?

7 MR. HAZAN: Objection to form.

8 A Again, just based on what I see
9 in front of me, I see property clerk New
10 York City Police Department indicated as
11 one of the parties.

12 Q What is the date on that hold
13 harmless agreement?

14 MR. HAZAN: Objection to form.

15 A I don't know independently and I
16 cannot quite read it from the copy given
17 to me.

18 Q Can you tell me a month?

19 MR. HAZAN: Objection to form.

20 And we could all read this document he
21 didn't create this document. I don't
22 see the purpose of this, but go ahead.

23 A I see the word May.

24 Q Do you see the year?

25 A It is illegible.

1 ROUGH DRAFT

2 Q Is that better?

3 MR. HAZAN: For the record,
4 counsel for plaintiff is showing the
5 witness another document also Bates
6 stamped NYC 127.

7 A Again, it is illegible. I can
8 try to interpret it, but I can't say for
9 certain what that date says.

10 Q Can you tell us if this document
11 turned over by the City as NYC 127,
12 relates to the Kapiti case, to your
13 knowledge?

14 MR. HAZAN: Objection.

15 A I don't know.

16 Q For a moment looking again at
17 Plaintiff's 10, assume for a moment for my
18 question, that the date of the hold
19 harmless agreement was sworn to on the
20 30th day of May 2006. Typically after a
21 hold harmless agreement is entered into
22 with a party or whomever it's entered into
23 with, what is the next step that you,
24 representing the NYPD, would do?

25 MR. HAZAN: Objection.

1 ROUGH DRAFT

2 A I would need you to rephrase
3 that. You want me to testify as to facts
4 based on a hypothetical.

5 Q Let me rephrase. You receive a
6 hold harmless agreement from Honda
7 financial, what is your next move, what is
8 it that you do next as representing the
9 City in the negotiations?

10 MR. HAZAN: Objection to form.

11 A I really couldn't say, there's
12 no general next move, it would depend on
13 the case. I really couldn't --

14 Q Why would you seek a hold
15 harmless agreement from a car could?

16 MR. HAZAN: Objection.

17 A All I can testify to is my own
18 memory and I would seek it because --
19 honestly I really couldn't say why I would
20 seek it, it's part of a settlement
21 agreement with the titled owner of the
22 vehicle.

23 Q So if the titled owner of the
24 vehicle signed a hold harmless agreement,
25 is it your testimony that you would then

1 ROUGH DRAFT

2 return the vehicle to the titled owner?

3 MR. HAZAN: Objection to form.

4 A No, that's not exactly what I'm
5 saying, honestly I couldn't say exactly
6 why the hold harmless would be given nor
7 with any certainty exactly what would
8 happen based on the hold harmless being
9 signed.

10 Q Really?

11 A Correct.

12 Q So why would you have a hold
13 harmless agreement with a car company if
14 it didn't result in the return of the
15 vehicle to that car company?

16 MR. HAZAN: Objection to form.

17 Again, the witness is here to testify
18 about what he did, not general
19 policies.

20 MR. KESSLER: I'm asking what he
21 did.

22 MR. HAZAN: What he did in this
23 case?

24 MR. KESSLER: I'm asking what he
25 did, sure.

1 ROUGH DRAFT

2 A You're actually asking why I did
3 it and I really couldn't say, I didn't
4 draft the agreement.

5 Q Well, is it fair to say it is a
6 form agreement most have the document is
7 typed in already?

8 MR. HAZAN: Objection.

9 A Well, I mean that would be true
10 of just about everything.

11 Q Is it true about this?

12 MR. HAZAN: Objection to form.

13 He didn't draft this he testified.

14 MR. KESSLER: I'm not asking if
15 he drafted it, is this a form
16 document?

17 MR. HAZAN: Objection.

18 A Again, I mean, I understand what
19 you're getting at, but you are going to
20 have to be more clear for me. I did not
21 draft this document.

22 Q I'm sure you didn't. Somewhere
23 in the Civil Enforcement Unit on 2
24 Lafayette Street, there is a stack of
25 papers which without the filled in words

1 ROUGH DRAFT

2 looks a lot like this; is that correct?

3 MR. HAZAN: Objection to form.

4 A So your question specifically is
5 somewhere in CEU there is a stack of
6 papers that looks like this, but not
7 filled in, and my answer to that is I
8 could not say, I do not know.

9 Q Is this generated by a computer?

10 MR. HAZAN: Objection to form.

11 Q Or is it a preprinted form?

12 MR. HAZAN: Objection to form.

13 Again, he didn't fill this out.

14 Q With the exception of the
15 handwritten material?

16 MR. HAZAN: Objection to form.

17 Again, he didn't fill this out. There
18 is no foundation laid that he would
19 know any of this information and he's
20 here to be a fact witness about what
21 he did in this case.

22 MR. KESSLER: Are you done?

23 MR. HAZAN: I'm done.

24 MR. KESSLER: Thank you.

25 A So give me your question again.

1 ROUGH DRAFT

2 Q Have you ever seen a hold
3 harmless agreement before?

4 A I have.

5 Q Does it look something like what
6 is in front of you as Plaintiff's 10?

7 MR. HAZAN: Objection to form.

8 A The document in front of me
9 appears to be a hold harmless form which I
10 have seen before, not this specific
11 document but the form itself.

12 Q Now, when you say not this
13 specific document, but the form, what do
14 you mean?

15 A The format of the document in
16 front of me.

17 Q Is familiar to you?

18 A Including the type set and
19 physical characteristics of the letter.

20 Q How is it familiar to you?

21 MR. HAZAN: Objection.

22 Q Why is it familiar to you?

23 A Because I've seen them before.

24 Q Where?

25 A While working at the Civil

1 ROUGH DRAFT

2 Enforcement Unit.

3 Q Did you ever use one before?

4 MR. HAZAN: Objection.

5 A Explain "use".

6 Q Did you have a document like
7 this in any of your cases?

8 MR. HAZAN: Objection. Are we
9 talking about the exact document with
10 the same words or are we talking about
11 a document like this?

12 MR. KESSLER: We're talking
13 about what the question was.

14 A The appearance of this document
15 looks familiar to me, including or rather
16 as something I have seen in the course of
17 my work at the Civil Enforcement Unit.

18 Q I understand that you've
19 testified that you don't believe you've
20 seen this particular document before was
21 that your testimony?

22 A That's correct.

23 Q But I'm talking now the generic
24 document that you referred to as a hold
25 harmless agreement, have you seen that

1 ROUGH DRAFT

2 before?

3 MR. HAZAN: Objection.

4 Q And you testified yes correct?

5 A I mean I apologize for being
6 repetitive the only thing I can say for
7 certain this appears to be a hold harmless
8 which is something I have seen before.

9 Q Did you ever use a hold harmless
10 agreement in any of your cases while at
11 CEU?

12 MR. HAZAN: Objection to form.

13 A Again, I'm not comfortable with
14 the word use, I don't know specifically
15 what you mean.

16 Q Did the resolution of any of
17 your cases involve the use of a hold
18 harmless agreement?

19 A To my memory, the resolution of
20 cases that I had been involved with
21 included a hold harmless agreement.

22 Q Under what circumstances would
23 you use a hold harmless agreement?

24 MR. HAZAN: Objection.

25 A I'm sorry, you'll have to be

1 ROUGH DRAFT

2 more specific.

3 Q I can't be, this is your
4 question, when would you use a hold
5 harmless agreement in one of your cases?

6 MR. HAZAN: Objection.

7 A I can't say specifically, it
8 would depend on the case.

9 Q Such as what, what would it
10 depend on?

11 MR. HAZAN: Objection.

12 A To the best of my memory, when a
13 vehicle is returned to the titled owner.

14 Q When the vehicle was returned to
15 the titled owner, there would be a hold
16 harmless agreement signed by the titled
17 owner, is that your testimony?

18 A To the best of my memory, yes.

19 Q You've several times used the
20 term titled owner, as opposed to what
21 other type of owner would that be?

22 MR. HAZAN: Objection.

23 A The phrase titled owner as I use
24 it, refers to the person or entity named
25 on the certificate of title.

1 ROUGH DRAFT

2 Q Does it refer to the person or
3 entity named on the registration?

4 A No.

5 Q If the titled owner and the
6 registered owner were different, what
7 would you do as the person representing
8 the Civil Enforcement Unit?

9 MR. HAZAN: Objection to form.

10 A It's just that's to vague, I
11 don't understand what you mean what I
12 would do.

13 Q A notice would be sent out for a
14 Krimstock hearing, correct?

15 MR. HAZAN: Objection.

16 A It depends on the circumstances.

17 Q Under what circumstances would a
18 notice for a Krimstock hearing not be sent
19 out?

20 MR. HAZAN: Objection.

21 A Because I have no independent
22 recollection of this case, I can't answer
23 a question like that, without a detailed
24 and specific list of circumstances leading
25 up to it.

1 ROUGH DRAFT

2 Q Was Mr. Kapiti the titled owner
3 of this vehicle?

4 A I don't know.

5 Q Does Plaintiff's 1 refresh your
6 recollection?

7 A Plaintiff's 1 does not refresh
8 my own recollection, there is a caption on
9 Plaintiff's 1 that indicates titled owner
10 HVT Incorporated.

11 Q Do you know what HVT
12 Incorporated is?

13 A I do not.

14 Q But Plaintiff's 1 does indicate
15 that Mr. Kapiti was notified for a
16 Krimstock hearing, correct?

17 MR. HAZAN: Objection.

18 A On Plaintiff's 1 there is an
19 indication that Mark Kapiti was given
20 notice of a hearing.

21 Q Yet he is not the title owner
22 according to that document, correct?

23 A Right. There is an indication
24 on this form that the titled owner is not
25 Mark Kapiti.

1 ROUGH DRAFT

2 Q So, why if you know, was Mr.
3 Kapiti given notice of a hearing if he was
4 not the titled owner to the vehicle?

5 MR. HAZAN: Objection to form.

6 A Repeat the question. I'm sorry.

7 Q Why was Mr. Kapiti given notice
8 of a Krimstock hearing if he was not the
9 titled owner to the vehicle?

10 A I don't know, or rather, don't
11 recall.

12 Q Are you familiar with the second
13 circuit decision in Krimstock versus
14 Kelly?

15 MR. HAZAN: Objection.

16 A No. Familiar to what extent?

17 Q I'm not testing you on it. I'm
18 just asking you if it was a case that you
19 knew about or discussed with your
20 supervisors when you were at civil
21 enforcement?

22 MR. HAZAN: Objection.

23 A I have no specific recollection
24 of discussing it with anyone. The name of
25 the case you stated does sound familiar to

1 ROUGH DRAFT

2 me in regards to the forfeiture.

3 Q Do you know what the decision
4 stands for?

5 MR. HAZAN: Objection.

6 A I do not.

7 Q Going back to Plaintiff's 1,
8 that entry on June 5th, it says awaiting
9 DAR, what is that?

10 A To the best of my memory, that
11 is a district attorney's release.

12 Q And then after that it says,
13 "ADA Rita Benevich wants car for evidence,
14 will call when released." There is a
15 telephone number and then file on GT desk.
16 GT. Is that you, GT?

17 A I can't say for certain that I
18 made that entry, but it is an indication
19 that I made that entry.

20 Q And would that entry indicate
21 that the file remained on your desk?

22 MR. HAZAN: Objection to form.

23 A The entry indicates that at the
24 time the entry was made the file was on
25 GT's desk.

1 ROUGH DRAFT

2 Q The next entry that would be on
3 page one of Plaintiff's 1, do you see the
4 date on that?

5 A You are referring to the entry
6 immediately above the June 5th entry?

7 Q Yes.

8 A The date reads 7-10-2006.

9 Q And that entry says awaiting.
10 DAR what does that mean?

11 A It seems to indicate awaiting
12 the district attorney's release.

13 Q And at the end of that it says,
14 "File to cabinet. GT." Those are your
15 initials again, although you don't have
16 specific recollection of that, correct?

17 A Correct.

18 Q Okay. I want to show you what
19 has been marked Plaintiff's 5, have you
20 ever seen it before?

21 A I can't say for certain if I
22 have ever seen this particular document,
23 but the format is familiar to me.

24 Q What is it familiar as?

25 A Part of a set of interoffice

1 ROUGH DRAFT

2 memos inside the police department. In
3 trial office I should say.

4 Q What's the date on this
5 document?

6 A Reading from the document, June
7 2nd, 2006.

8 Q And this is document Bates
9 stamped NYC 15 and turned over as part of
10 the discovery by the City. Whose
11 signature is in the middle of the page
12 there, if you know?

13 MR. HAZAN: Objection to form.

14 A I don't know.

15 Q You've never seen that signature
16 before?

17 MR. HAZAN: Objection.

18 A I don't remember, it doesn't
19 look familiar to me. I do not know.

20 Q Is there a date next to the
21 signature right underneath the signature
22 line?

23 MR. HAZAN: Objection.

24 A I see the digit, 6-2-06.

25 Q That correlates to the June 2,

1 ROUGH DRAFT

2 2006, at the top of the page, correct?

3 MR. HAZAN: Objection.

4 A Yes.

5 Q And below the signature it says
6 the name of Robert F. Messner, correct?

7 A Yes.

8 Q And he would be the man in
9 charge at the Civil Enforcement Unit?

10 A He's the commanding officer of
11 the Civil Enforcement Unit.

12 Q On the bottom of the page, the
13 left-hand side, do you see where it says
14 DAs release received verbal written?

15 A Yes.

16 Q Do you see the box to the left
17 of that?

18 A I do.

19 Q Do you see that it's checked?

20 A I do.

21 Q And do you see the word written
22 to the right is circled, correct?

23 A I agree.

24 Q What does that mean?

25 MR. HAZAN: Objection.

1 ROUGH DRAFT

2 A What does it mean?

3 Q Yes.

4 A I mean, I can just read from it
5 the same as you can. It says district
6 attorneys release received and the word
7 written is circled.

8 Q So a written release was
9 received and that box was checked off?

10 MR. HAZAN: Objection.

11 A It would seem to indicate that,
12 I can't say for certain that it was
13 actually received.

14 Q Do you know whose signature is
15 at the bottom right of the document?

16 A I don't.

17 MR. KESSLER: Off the record.

18 (Discussion off the record.)

19 Q Back on the record.

20 Let me show you what has been
21 marked as Plaintiffs' Exhibit 2.

22 A Okay. The document is Bates
23 stamped NYC 16 handed over as part of
24 discovery by the City, have you ever seen
25 this before.

1 ROUGH DRAFT

2 A Not that I recall.

3 Q Have you ever seen something
4 like it before?

5 MR. HAZAN: Objection.

6 A This does not look familiar to
7 me, no.

8 Q Okay on the top right it has the
9 name Eva Marie Russo, is that the young
10 lady you referred to earlier?

11 MR. HAZAN: Objection.

12 A Which lady specifically?

13 Q When we were talking about your
14 supervisors at the CEU?

15 A Eva Marie Russo was my
16 supervisor.

17 Q She was your immediate
18 supervisor?

19 A Correct.

20 Q And there is a CC to the left
21 MCCARTHC@BronxDA.NYC.GOV, do you see that?

22 A I do.

23 Q Do you know what that is, who
24 that refers to?

25 A I do not.

1 ROUGH DRAFT

2 Q The substance of this document
3 says pursuant to the second amended order
4 and judgment in the matter of Krimstock
5 versus Kelly, do you see that?

6 A I do.

7 Q What is your understanding of
8 what the second amended order and judgment
9 in the matter of Krimstock versus Kelly
10 was?

11 MR. HAZAN: Objection.

12 A I definitely don't recall.

13 Q Does the substance of this
14 document refresh your recollection as to
15 what that would be?

16 MR. HAZAN: Objection.

17 A No -- does the substance of this
18 document refresh my memory as to what the
19 second amended order and judgment in the
20 matter of Krimstock v. Kelly means, my
21 answer is no.

22 Q The substance of this document
23 requests the DA's office to respond no
24 later than three business days before the
25 hearing date whether or not the vehicle is

1 ROUGH DRAFT

2 needed as evidence in the criminal
3 proceeding. Do you see that substance of
4 the e-mail?

5 MR. HAZAN: Objection.

6 A I do.

7 Q And toward the bottom of the
8 e-mail, you see the number two, it says
9 defendant Mark Kapiti? It's in the middle
10 of the page.

11 A Yes, I do see that.

12 Q And underneath the word vehicle
13 it says OATH hearing dash June 5, 2006,
14 correct?

15 A Yes.

16 Q Going back for a minute to
17 Plaintiff's 1, in the column that says
18 hearing notice, does that refresh your
19 recollection as to what that date means?

20 MR. HAZAN: Objection.

21 A It does not refresh my
22 recollection as to what it means.

23 Q But at least according to this
24 e-mail the OATH hearing was scheduled for
25 June 5th, correct?

1 ROUGH DRAFT

2 MR. HAZAN: Objection.

3 A Plaintiffs' Exhibit 2, which I
4 have in front of me?

5 Q Yes.

6 A Seems to indicate that an OATH
7 hearing date was scheduled for June 5,
8 2006.

9 Q For Mr. Kapiti?

10 A Right this is not based on my
11 memory, this is simply what I'm reading in
12 front of me and what it seems to indicate.

13 Q Assuming that is accurate for a
14 moment and assuming that June 5th, 2006,
15 was a Monday, which we can spend a lot of
16 time litigating that if the City need be,
17 but let's take that as an assumption for
18 the moment, three business days before
19 June 5th, 2006, would have been when?

20 MR. HAZAN: Objection.

21 Q If the 5th were a Monday?

22 MR. HAZAN: Objection.

23 Q What is your objection?

24 MR. HAZAN: This is a line of
25 questioning that -- you are asking him

1 ROUGH DRAFT

2 a hypothetical.

3 MR. KESSLER: I'm not asking him
4 a hypothetical.

5 MR. HAZAN: We don't know if
6 there were any holidays, we don't know
7 if it was a Monday, and it's something
8 you could figure out as part of the
9 record, there's no reason this witness
10 needs to answer how many business days
11 it was before June 5th. It's
12 something you can calculate and argue
13 in whatever papers you need to submit
14 to the court. But he can answer if he
15 can, I'm just objecting.

16 A So the question is?

17 Q May 31st is three business days
18 prior to June 5th, 2006, did your office
19 receive a district attorney's release on
20 or before May 31, 2006, regarding Mr.
21 Kapiti's car?

22 MR. HAZAN: Objection.

23 A I definitely have no independent
24 recollection of that. If you want to
25 point to something --

1 ROUGH DRAFT

2 Q Based upon Plaintiff's
3 Exhibit 1, and the entries there?

4 MR. HAZAN: Objection.

5 A So the question is?

6 Q On May 31, 2006, did your office
7 have a district attorney's release
8 regarding Mr. Kapiti?

9 MR. HAZAN: Objection.

10 A There's no way for me to tell
11 from Exhibit 1 whether or not the office
12 had received a district attorney's
13 release.

14 Q The entry on 6-5-06 which says
15 awaiting DAR, the entry on 7-10-06 which
16 says awaiting DAR?

17 A Again to clarify, the entries
18 here indicate that no district attorney's
19 release had been received on those dates,
20 but there's no way I can testify with any
21 certainty that it was or was not.

22 Q Is there any reason for you to
23 believe that the document produced by the
24 City that's been marked as Plaintiff's
25 Exhibit 1 is incorrect or fraudulent?

1 ROUGH DRAFT

2 A Not fraudulent. Certainly, but
3 certainly susceptible to human error,
4 Plaintiff's ls a printout of a computer,
5 in-house computer tracking system used for
6 informational purposes within the office
7 only. Which is the reason I can't say for
8 certain that the GT entries were made by
9 me, nor testify to the voracity of the
10 entries that are made.

11 Q So you cannot testify to the
12 voracity of the entries that are made?

13 A Correct.

14 Q Are you aware of what the
15 procedures required under the second
16 amended order and judgment of Krimstock
17 are?

18 MR. HAZAN: Objection.

19 A I definitely do not have
20 sufficient independent recollection to
21 explain the second amended order and
22 judgment.

23 Q Mr. Kapiti has already testified
24 that he was called and told that his
25 Krimstock hearing was cancelled. Were you

1 ROUGH DRAFT

2 the person who called him?

3 MR. HAZAN: Objection.

4 A I don't remember.

5 Q So that's neither a yes or a no,
6 you just don't remember?

7 A Correct.

8 Q Why is there no entry on
9 Plaintiff's Exhibit 1 indicating that the
10 Krimstock hearing was cancelled?

11 MR. HAZAN: Objection.

12 A Well, firstly I cannot say for
13 certain that there is no indication on
14 here where it was cancelled.

15 Q Show me an indication where it
16 was cancelled.

17 MR. HAZAN: Objection.

18 A My answer is simply that I
19 cannot state with certainty that this
20 document does not indicate that it was
21 cancelled. Similarly I can't pick out the
22 spot where it says that it is either. If
23 you care to point out something on here, I
24 would be happy to try --

25 Q There is nothing on here that I

1 ROUGH DRAFT

2 see, but there may be that you know. But
3 there's no indication that any hearing was
4 conducted or cancelled for that matter?

5 A Do we have a question for me to
6 answer?

7 Q No, I'm just answering yours.
8 When you have an OATH hearing, what are
9 the procedures of the OATH hearing?

10 MR. HAZAN: Objection.

11 Q That you've conducted?

12 MR. HAZAN: Objection.

13 Q What happens at an OATH hearing?

14 MR. HAZAN: Objection.

15 A I mean, specifically what would
16 you like to know?

17 Q Do you testify, does the owner
18 testify, what happens?

19 MR. HAZAN: Objection.

20 A To the best of my memory, there
21 is an appearance made by a representative
22 of the police department and an appearance
23 made by whoever was noticed for the
24 hearing.

25 Q Both of you appear before a

1 ROUGH DRAFT

2 judge?

3 MR. HAZAN: Objection.

4 A Administrative judge.

5 Q Is there testimony taken?

6 MR. HAZAN: Objection.

7 A Explain "testimony" to me.

8 Q You tell me, you conducted the
9 hearings, I want to know what happens when
10 you conduct an OATH hearing.

11 A The OATH hearing determines who
12 will hold onto a vehicle pending the
13 outcome of any pending any civil
14 forfeiture actions.

15 Q That's correct?

16 A That is determined by the
17 administrative judge at OATH, that is
18 pretty much the extent of my recollection
19 of it.

20 Q Does a police officer testify at
21 the OATH hearing?

22 MR. HAZAN: Objection.

23 A Again, it depends on the
24 hearing. Never in my experience or
25 recollection did a police officer testify

1 ROUGH DRAFT

2 at the hearing.

3 Q Okay. That's the answer that
4 I'm looking for.

5 A Okay.

6 Q Does the noticed party, the
7 owner, testify as the hearing?

8 MR. HAZAN: Objection.

9 A Again, they are entitled to, but
10 I don't have any independent recollection
11 of any specific hearing that, you know,
12 that you might be referring to, they are
13 entitled to.

14 Q They are entitled to?

15 A Right.

16 Q And in your experience having
17 handled OATH hearings, have you had
18 hearings where the owner has testified?

19 A In my experience with OATH
20 hearings has the owner ever testified,
21 that's your question?

22 Q Yes.

23 A To the best of my memory, yes
24 owners have testified.

25 Q You said that the issue is the

1 ROUGH DRAFT

2 retention of the vehicle pending the
3 forfeiture case, correct?

4 A That's my understanding.

5 Q Regarding Mr. Kapiti and his
6 vehicle, is there anything in any of the
7 documents that I've shown you today or
8 based on your recollection that indicates
9 that a civil forfeiture action was
10 commenced against him or his vehicle?

11 MR. HAZAN: Objection to form.

12 A I have no independent
13 recollection of one.

14 Q Is there anything on the CEU
15 voucher tracking system that indicates
16 that a forfeiture action was commenced
17 against the vehicle?

18 MR. HAZAN: Objection.

19 A I can't tell, I don't know.

20 Q Do you recall any discussions
21 you may have had with Honda regarding the
22 vehicle in question here?

23 A I don't recall.

24 Q Was there a procedure while you
25 were at CEU, was there a procedure in

1 ROUGH DRAFT

2 place relating to leased vehicles?

3 MR. HAZAN: Objection.

4 A Nothing specific that I can

5 think of, no.

6 Q Were leased vehicles treated any

7 differently than non-leased vehicle?

8 MR. HAZAN: Objection. Again,

9 the witness is here to talk about the

10 facts of this case.

11 Q You can answer.

12 A Every case was treated

13 individually, I cannot say for certain

14 whether leased vehicles were or were

15 not -- whether leased vehicles were

16 treated any differently than any other.

17 Q On Plaintiff's 1, there is a

18 line on the left-hand side for litigation

19 attorney, do you see that?

20 A I do.

21 Q It's blank, correct?

22 A On the copy in front of me, it

23 is.

24 Q Do you know why?

25 A I don't.

1 ROUGH DRAFT

2 MR. KESSLER: Off the record.

3 (Discussion off the record.)

4 Q Back on the record. Let's go
5 back to Plaintiffs' Exhibit 3. Did you
6 prepare this letter, this memo?

7 A I don't have any independent
8 recollection of having prepared it. My
9 signature is at the bottom of the letter
10 indicating that I did.

11 Q Is there any reason for you to
12 believe that you did not prepare this
13 letter as you see it here today?

14 A You'd have to clarify the word
15 "prepare." This is a form letter used
16 within the police department. So likely I
17 did not draft it, but by having signed it,
18 I likely read it.

19 Q Explain that likely you did not
20 draft it?

21 A This letter is part of a
22 package, I believe, of three letters that
23 stay within the office generally as just
24 updates for the status of a case. The
25 language on each of them is typically

1 ROUGH DRAFT

2 exactly the same with changes only in the
3 date and the people involved.

4 Q And the car?

5 A And the vehicle. Dates, storage
6 numbers et cetera, so for sake of
7 clarification of my answer, it appears as
8 though I signed this letter, but the word
9 prepare again it's unlikely that I
10 actually drafted the letter in its
11 entirety.

12 Q Would you have filled in those
13 blanks that you indicated just a moment
14 ago?

15 MR. HAZAN: Objection.

16 Q Would you have filled in seizure
17 number, storage number, the date, the type
18 of car things like that?

19 A Possibly.

20 Q Who is it sent to, you said it
21 is part of a package, who is the assistant
22 commissioner, Civil Enforcement Unit?

23 MR. HAZAN: Objection. Is the
24 question who is that or is it who was
25 it sent to?

1 ROUGH DRAFT

2 Q This document is addressed to
3 whom, Sergeant?

4 A Based on the document in front
5 of me, it appears to be addressed to the
6 assistant commissioner of the Civil
7 Enforcement Unit, which to the best of my
8 recollection on the date -- at the time
9 the letter was dated was Robert Messner.

10 Q I'm going to show you what has
11 been marked Plaintiff's 4. Do you know
12 what that is?

13 A It appears to be the second of
14 three in-house letters that circulate the
15 Civil Enforcement Unit for informational
16 purposes.

17 Q And if you could, just for a
18 moment, go back to Plaintiff's 3, what was
19 the date on that?

20 A Plaintiff's 3 is dated June 2nd,
21 2006.

22 Q What about Plaintiff's 4?

23 A Plaintiff's 4 is dated June 2nd,
24 2006.

25 Q And from whom and to whom is

1 ROUGH DRAFT

2 this memo?

3 MR. HAZAN: Objection.

4 Q It's written by whom?

5 MR. HAZAN: Objection.

6 A Based strictly on the letter in
7 front of me, the line from says assistant
8 commissioner Civil Enforcement Unit.

9 Q And that was Mr. Messner at the
10 time?

11 A To the best of my knowledge on
12 June 2, 2006, that was Robert Messner and
13 it's addressed to the commanding officer
14 of the property clerk division.

15 Q Who is that?

16 A That I don't know, or that I
17 don't recall rather.

18 Q Is this one of the other parts
19 of the packet that you referred to moments
20 ago?

21 A Correct.

22 Q Of the three letters?

23 A Correct.

24 Q So Plaintiff's 3 is one,
25 Plaintiff's 4 is another?

1 ROUGH DRAFT

2 A Correct.

3 Q And would Plaintiff's 5 been the
4 third which I believe I've shown you
5 before?

6 A To my memory, this would
7 represent the third of the package that is
8 usually prepared together.

9 Q And it appears that all three
10 are dated the same date, correct?

11 A Correct.

12 Q Plaintiff's 4 indicates in bold
13 letters in the top there, the case has
14 been settled, please release the vehicle
15 to the properly identified bearer of
16 release showing valid ownership of the
17 vehicle, correct?

18 A That's what it says, yes.

19 Q Yet on the top right next to the
20 word settle it has the word "none," do you
21 see that?

22 A I do see that.

23 Q What does that mean?

24 MR. HAZAN: Objection.

25 Q If you know.

1 ROUGH DRAFT

2 A I do not know or rather I don't
3 recall.

4 Q But based upon these three
5 documents as a whole I guess, as of
6 June 2, 2006, the Civil Enforcement Unit
7 had released the vehicle to the properly
8 identified bearer of release showing valid
9 ownership of the vehicle correct answering
10 his questions for him?

11 MR. HAZAN: What?

12 MR. KESSLER: Are you answering
13 his questions for him?

14 MR. HAZAN: I certainly am not.

15 Q Okay.

16 A If the question is does this
17 indicate that June 2, 2006, the vehicle
18 was released --

19 Q No.

20 A Okay.

21 Q The question is as of June 2,
22 2006, The Civil Enforcement Unit had
23 released the vehicle and closed its case
24 regarding property clerk versus Mark
25 Kapiti?

1 ROUGH DRAFT

2 MR. HAZAN: Objection.

3 Q The vehicle involving Mr.
4 Kapiti, correct?

5 MR. HAZAN: Objection.

6 A No.

7 Q No?

8 A The documents you are referring
9 to and I have just looked over appear to
10 indicate an intent to release the vehicle.

11 Q So if I had -- if I was in
12 possession of let's say all three of these
13 documents and I went to the pound where
14 the car was held and I presented it with
15 proper identification as the owner, would
16 I get the vehicle back?

17 MR. HAZAN: Objection.

18 A First of all, I'm not
19 comfortable answering it as a
20 hypothetical. And even as a hypothetical
21 it's flawed in that, other than the third
22 marked Plaintiffs' Exhibit 5.

23 Q Yes?

24 A These documents stay within the
25 police department so --

1 ROUGH DRAFT

2 Q So let's use Plaintiff's 5.

3 A Okay.

4 Q I take that to the pound, show a
5 proper ID, do I get the car back?

6 MR. HAZAN: Objection.

7 A All other things -- I can't say
8 with certainty you would get the car back,
9 but the indication here is that the legal
10 bureau has authorized the release of the
11 vehicle. So I mean, you're stating simply
12 showing up with this one piece of paper
13 you are asking if that is enough to have
14 the car released, my answer would be no.

15 Q My question is Plaintiff's 5,
16 this letter, it says notice to vehicle
17 claimant's. Do you see the bottom
18 portion?

19 A Yes.

20 Q This letter gives the titled
21 owner authorization to claim the above
22 vehicle from the college point pound, then
23 next line, in capital letters, claim it
24 immediately. Do you see that?

25 A I do.

1 ROUGH DRAFT

2 Q Okay. So let me rephrase my
3 question. With the documents that this
4 letter says I have to have, the
5 certificate of title, notarized copy of
6 the title, government issued photo
7 identification, I take this to the pound,
8 the pound looks at it with the other
9 document, do I get the vehicle back?

10 MR. HAZAN: Objection.

11 A I mean, reading what you just
12 read it would indicate that to me, but I
13 can't testify that that's true.

14 Q What would make it not true?

15 MR. HAZAN: Objection.

16 A The letter appears to give
17 authority to the person named on it to
18 pick up the vehicle that's about the most
19 I can state.

20 Q If this didn't give me authority
21 to pick up my car or if this didn't give
22 the person named on here or entity
23 authority to pick up the car, then what
24 value would this document be?

25 MR. HAZAN: Objection.

1 ROUGH DRAFT

2 A I don't know.

3 Q I don't either. Okay. If you
4 wish to have a minute with the witness you
5 may, but writing notes down on your pad,
6 I'm not going to tolerate and I'm going to
7 ask for a copy of the notes that you are
8 making and crossing out if this continues?

9 MR. HAZAN: I'm not writing
10 notes on my pad.

11 MR. KESSLER: You wrote the word
12 no, you wrote the word which I can
13 read upside down, so please.

14 THE WITNESS: Can we take a
15 break then?

16 MR. KESSLER: Sure.

17 Off the record.

18 (Discussion off the record.)

19 (Brief recess was
20 taken.)

21 Q Back on the record. Just as a
22 statement for the record, and I know I
23 don't have to tell you this. You are the
24 one under oath. I don't want anything
25 that is not true, I don't want anything

1 ROUGH DRAFT

2 that is fabricated or false from your
3 testimony. Your attorney can say whatever
4 he wants, he's not the one under oath.
5 Okay. So if you don't know, you don't
6 know, if you do know, please give the
7 correct and truthful answer. That's all
8 I'm asking from you here.

9 Refer to Plaintiff's Exhibit 1
10 please. We said earlier bottom of page
11 one there is an entry on July 10, 2006, do
12 you see that?

13 A I do.

14 Q Which has your initials at the
15 end of the entry. Do you recall what
16 happened on or about July 10, 2006, that
17 caused you to make that entry?

18 A I do not.

19 Q Let me show you what has been
20 marked Plaintiff's Exhibits 6 and 7, do
21 these documents refresh your recollection
22 as to what may have happened on July 10,
23 2006, to cause you to make that entry?

24 A It does not refresh any
25 recollection, no.

1 ROUGH DRAFT

2 Q Do you know who Crossland Group
3 is?

4 A I don't.

5 Q These are documents that were
6 produced to us I believe by the City by
7 way of Honda financial or maybe Honda
8 directly provided it to us. Have you ever
9 seen these documents before?

10 A No, not that I recall.

11 Q On Plaintiff's 7, it indicates
12 let's take the entry dated 7-6, I think
13 that says AG we spoke with George at legal
14 bureau would that be you?

15 A I have no way of knowing.

16 Q No recollection whatsoever?

17 A None whatsoever.

18 Q Did you receive on a regular
19 basis many calls from either leasing
20 companies or the towing companies
21 regarding various cars?

22 MR. HAZAN: Objection.

23 A I don't recall calls from
24 leasing companies and tow companies in
25 particular, no.

1 ROUGH DRAFT

2 Q Would it be something, did you
3 have a journal or some book that you kept
4 your entries for the day in while you were
5 at the Civil Enforcement Unit?

6 A No. What kind of entries?

7 Q I don't know. We would call
8 them time sheets, but I don't know what
9 they would be called with Civil
10 Enforcement Unit?

11 A No, nothing like that that I can
12 recall.

13 Q Would a call from a leasing
14 company or a tow truck company in general
15 stand out for you as something being very
16 different or unique?

17 A I don't recall how I would have
18 reacted to that at the time, no.

19 Q You've received more than one
20 call from a leasing company during your
21 two and a half years with the Civil
22 Enforcement Unit, is that a fair
23 statement, you've spoken to them
24 periodically, depending on the case you
25 were working on?

1 ROUGH DRAFT

2 A I don't recall any calls from
3 leasing companies.

4 Q Do you recall any calls from tow
5 truck operators?

6 A No.

7 Q In June and July of 2006, was
8 there another George working at Civil
9 Enforcement unit?

10 A Not that I know.

11 Q Were you ever involved in a case
12 where there were competing claims to a
13 particular vehicle?

14 MR. HAZAN: Objection.

15 A None that I can recall.

16 Q To your knowledge, did there
17 come a time when you received a copy of
18 the district attorney's release in the
19 Kapiti case?

20 A Not that I remember.

21 Q Looking at Plaintiff's
22 Exhibit 1, does it refresh your
23 recollection?

24 A There's nothing in Plaintiff's
25 Exhibit 1 that refreshes my recollection

1 ROUGH DRAFT

2 as to whether or not I received or our
3 office received a district attorney's
4 release.

5 Q I'm going to go back for a
6 minute to Plaintiff's 3, 4 and 5, those
7 are the three documents, the packet that
8 you referred to?

9 A Okay.

10 Q This case involves Honda, so if
11 you want to relate it to this case you
12 may, but I'm asking more of a general
13 question, how is the release given to the
14 claimant of the vehicle when the vehicle
15 is returned to the claimant, how is that
16 done; is it mailed, is it picked up by the
17 claimant, in general in your experience,
18 how is that done?

19 MR. HAZAN: Objection.

20 A I definitely do not remember,
21 any of the above is certainly possible.

22 Q You indicated that Plaintiff's 3
23 and 4 are internal documents, correct?

24 A Correct.

25 Q So if a vehicle was being

1 ROUGH DRAFT

2 released, let's say to Mr. Kapiti or to
3 Honda, they would not be given Plaintiff's
4 3 and/or 4, is that a correct statement?

5 MR. HAZAN: Objection.

6 A I can't say for certain.

7 Q Is it usual that those documents
8 are released other than in litigation or
9 do they remain part of the City's file?

10 MR. HAZAN: Objection.

11 A I couldn't say other than I have
12 not released them to anyone.

13 Q That's what I'm asking for, you
14 haven't. Have you released a document
15 similar to Plaintiff's 5 to a claimant?

16 A Not that I recall and, in fact,
17 I would really have to clarify my answer
18 to the last question, it's not that I
19 haven't released them, it's that I don't
20 recall if I released them.

21 Q Have you ever released a vehicle
22 in any one of your cases?

23 MR. HAZAN: Objection.

24 A Well, again, the phrase release.

25 Q Authorized the release?

1 ROUGH DRAFT

2 MR. HAZAN: Objection.

3 A I didn't have the authority to
4 release vehicles.

5 Q Have you ever recommended the
6 authorization to release a vehicle in a
7 case, other than this case?

8 A It wasn't within my authority to
9 recommend the release on it.

10 Q Take a look at the last line of
11 Plaintiffs' Exhibit 3?

12 A Okay.

13 Q What does it say?

14 A I respectfully recommend that
15 the settlement be approved forthwith.

16 Q And the settlement was what in
17 that case?

18 A I don't recall.

19 Q What does the document say?

20 A The document reads what part
21 specifically.

22 Q Well, the part that your
23 recommending?

24 MR. HAZAN: Objection.

25 A The document reads that we would

1 ROUGH DRAFT

2 return the subject vehicle to Honda in
3 consideration of an executed hold harmless
4 agreement by Honda.

5 Q And that is, according to this
6 letter, your recommendation, correct?

7 A It's my recommendation that the
8 settlement be approved and those appear to
9 be the terms of the settlement.

10 Q That would involve the ultimate
11 release of the vehicle to Honda, correct?

12 MR. HAZAN: Objection.

13 A I mean, all I can testify to is
14 what it states here. I mean, I don't know
15 what ultimately the outcome of that would
16 be.

17 Q Any other cases where you
18 recommended that a settlement be approved
19 forthwith?

20 A None that I can recall offhand.

21 Q In the two and a half years that
22 you worked at civil enforcement?

23 A I'm not saying it didn't happen.

24 Q This is the only case that you
25 recommended that a settlement be approved?

1 ROUGH DRAFT

2 A No, I'm simply stating that I
3 don't recall any other cases, in fact, I
4 don't recall any cases in which I approved
5 it. I'm not stating it didn't happen, I'm
6 just saying I have no independent
7 recollection of doing it.

8 Q But you don't have any
9 independent recollection of ever having
10 negotiated a settlement in any of the
11 cases?

12 A Typically I didn't actually
13 negotiate settlements. In fact, in
14 reading Plaintiffs' Exhibit 3, in looking
15 at it now, I would say this form letter
16 should be reworded to change the second
17 paragraph where it says I have negotiated
18 because, in fact, it would be more
19 accurate to state we or the office has
20 negotiated.

21 Q If you weren't the one to go the
22 negotiation, who would it be?

23 A I couldn't say, it's any number
24 of people in the office.

25 Q What do you mean "any number of

1 ROUGH DRAFT

2 people in the office," would it be someone
3 of the same level as you, one of your
4 supervisors, who would it be?

5 A Again, I couldn't say. I don't
6 know.

7 Q So as you see this letter,
8 Plaintiff's 3, even with the wording the
9 way it is, you cannot state with certainty
10 that you were the individual who
11 negotiated the settlement on this case; is
12 that correct?

13 A That's correct.

14 Q And you have no recollection of
15 who that person might be?

16 A No.

17 Q Is there any document in the
18 files of the property clerk or the legal
19 bureau that might answer that question?

20 MR. HAZAN: Objection.

21 A I definitely don't know.

22 MR. KESSLER: Off the record.

23 (Discussion off the record.)

24 Q Back on the record.

25 Let me show you Plaintiff's

1 ROUGH DRAFT

2 Exhibits 8 and 9. These are two documents
3 that were produced by Honda. Have you
4 ever seen them before?

5 A Not that I remember.

6 Q Do you know what they are?

7 A I don't.

8 Q The first one, Plaintiff's 8,
9 was turned over as an invoice that it
10 received from the tow truck company,
11 regarding this case and at least the
12 document you'll see Mark Kapiti on the
13 right-hand side '06 Acura and the vehicle
14 identification number, do you see that?

15 A I do.

16 Q And it's marked invoice, do you
17 see that?

18 A Yes.

19 Q In the middle of the page?

20 A Yes.

21 Q You have no knowledge, do you,
22 as to whether this invoice was paid or to
23 whom?

24 A No, I have no knowledge at all
25 about this.

1 ROUGH DRAFT

2 Q Do you know who would?

3 A No.

4 Q Do you know if it is within the
5 City's usual business practices to retain
6 a document such as this?

7 MR. HAZAN: Objection.

8 A I definitely don't know.

9 Q On the bottom section of
10 Plaintiff's 8, it indicates that three
11 stops were made, do you see that unit
12 picked up out of college point auto pound
13 three stops, and it has 1, 2 and 3, the
14 first one being legal bureau, 2 Lafayette
15 Street NYC, do you have any recollection
16 of meeting with or speaking to anybody
17 from the Crossland Group regarding this
18 vehicle?

19 A No, I don't.

20 Q College Point Auto Pound, is
21 that what we refer to as the College Point
22 Pound out in Queens?

23 MR. HAZAN: Objection.

24 A I didn't right it so I don't
25 know what they are referring to.

1 ROUGH DRAFT

2 Q When someone talks about a
3 vehicle being at the College Point Pound,
4 where would that be?

5 MR. HAZAN: Objection.

6 A It depends on whose talking
7 about it.

8 Q Is there more than one College
9 Point Pound?

10 A There's a College Point Pound
11 that I'm familiar with.

12 Q Where is that?

13 A It's in College Point, New York,
14 College Point, Queens.

15 Q And is that the address for it?

16 A I don't recall.

17 Q And the item number three Eerie
18 EERIE Basin Impound Columbus Avenue,
19 Brooklyn, New York, what is that?

20 MR. HAZAN: Objection.

21 A Again, I didn't write it, so I
22 don't know.

23 Q Do you have any idea what that
24 refers to?

25 MR. HAZAN: Objection.

1 ROUGH DRAFT

2 A I didn't write it, so I couldn't
3 say what it's referring to. I do know
4 there is a pound in Brooklyn, New York. I
5 don't know that this refers to it or what
6 it refers to.

7 Q Have you ever heard of the Eerie
8 Basin Impound?

9 A The phrase sounds familiar, I
10 couldn't say for sure.

11 Q On the next line it says no
12 money paid out as this was a leased
13 vehicle, do you know what that refers to?

14 A No.

15 Q Do you know what it means?

16 A Just based on what I'm reading,
17 I have no idea what they are referring to
18 though.

19 Q How about the final line here,
20 service fee had to retrieve, you know what
21 the word after retrieve is DAS, DAS had to
22 retrieve DAS release before legal bureau
23 would allow pick up of unit copy attached,
24 were you involved in whatever that is?

25 A Not that I recall.

1 ROUGH DRAFT

2 Q Plaintiff's 9. Have you ever
3 seen this before?

4 MR. HAZAN: Objection.

5 A Not that I remember.

6 Q Do you know what it is?

7 A No.

8 Q Have you ever seen this type of
9 form before?

10 A Not that I remember.

11 Q You see at the top it says New
12 York State Department of Motor Vehicles?

13 A Yes.

14 Q Does it mean anything to you as
15 far as what the document is, does it
16 refresh your recollection?

17 A I have no recollection of what
18 the document is.

19 Q Have you ever seen a notice of
20 repossession?

21 A Not that I remember, no.

22 Q In any case?

23 A No. Not that I remember.

24 Q Do you have any knowledge of
25 what happened in Mr. Kapiti's criminal

1 ROUGH DRAFT

2 case?

3 A I do not.

4 Q Does Plaintiff's 1 refresh your
5 recollection?

6 A I mean I've reviewed Plaintiff's
7 one a few times now it hasn't refreshed my
8 recollection for anything about this. Is
9 there anything in particular you want to
10 point out, otherwise my answer is no.

11 Q The top entry after notes, so it
12 would be the most recent entry?

13 A Okay.

14 Q Dated 12-19-2006?

15 A I see the entry you are
16 referring to.

17 Q Does that refresh your memory as
18 far as the result of Mr. Kapiti's trial?

19 A No, it doesn't refresh any
20 independent recollection of the results of
21 his trial.

22 Q You never knew what happened to
23 his case?

24 MR. HAZAN: Objection.

25 Q Is that correct?

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2 A I don't know that I didn't know,
3 I know that if I did know, I don't
4 remember now.

5 Q Were you still working on this
6 case on December 19, 2006?

7 A I don't recall. I definitely
8 don't remember.

9 Q Are you familiar with the
10 forfeiture statutes in New York?

11 MR. HAZAN: Objection.

12 A Presently, not very.

13 Q Were you more familiar with them
14 in 2006?

15 MR. HAZAN: Objection.

16 A It's fair to say that in 2006 I
17 was more familiar with them than I am
18 today.

19 Q Are you aware of the term
20 innocent owner?

21 MR. HAZAN: Objection.

22 A Explain aware, the phrase sounds
23 familiar to me, I couldn't exactly explain
24 it or define it for you right now.

25 Q Would you have reason to use or

1 ROUGH DRAFT

2 to be knowledgeable of an innocent owner
3 when you were dealing with forfeiture
4 cases?

5 MR. HAZAN: Objection.

6 A I'm sorry the question again.

7 Q Was an innocent owner entitled
8 to the return of his vehicle under the
9 administrative code and under Krimstock
10 versus Kelly?

11 MR. HAZAN: Objection.

12 A I don't know.

13 Q In 2006?

14 A I don't know, or rather I don't
15 recall.

16 Q In the OATH hearings that you
17 conducted, did you ever have a leasing
18 company appear at an OATH hearing?

19 A I don't remember.

20 Q If you did, I call for the
21 production of any documents where the
22 leasing company appeared in any of the
23 forfeiture cases, but that shouldn't be
24 difficult because there aren't any.

25 MR. HAZAN: Your request is

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2 noted. Please put it in writing.

3 MR. KESSLER: No, it's being
4 requested now.

5 Q Did you ever read Krimstock
6 versus Kelly?

7 MR. HAZAN: Objection.

8 A I can't say for certain if I
9 ever read it in its entirety.

10 Q Did you read parts?

11 A Yes.

12 Q As you recall, did the second
13 circuit make any distinction in Krimstock
14 between lessees and non lessees?

15 MR. HAZAN: Objection.

16 A I do not remember.

17 Q Would it surprise you if I told
18 you that Krimstock referred to the
19 registered owner as opposed to the title
20 owner in its decision?

21 MR. HAZAN: Objection.

22 A The question is would that
23 surprise me.

24 Q I'm asking you this because
25 you've testified regarding the titled

1 ROUGH DRAFT

2 owner and you've made a point instead of
3 saying the owner you've made a point of
4 using the term titled owner, so my
5 question is would it surprise you if the
6 second circuit decision under which we're
7 doing what we're doing here, referred to
8 registered owners as opposed to titled
9 owners?

10 MR. HAZAN: Objection.

11 A I don't know what the
12 decision -- what the word registered owner
13 in the decision referred to, when I stated
14 titled owner I clarified and qualified it
15 with an explanation of what I interpreted
16 a titled owner to be, I won't hazard a
17 guess as to what the Krimstock opinion
18 means by registered owner.

19 Q Based upon the documents that
20 you've seen in this case, do you agree
21 that Mr. Kapiti was the registered owner
22 of the vehicle?

23 MR. HAZAN: Objection.

24 Q I'll refer you to Plaintiff's 1
25 which seems to be a wealth of information

1 ROUGH DRAFT

2 today.

3 A No, I would agree that I would
4 refer to him as the registered owner, but
5 it's an important qualification and
6 clarification of the term.

7 Q But more than that you don't
8 recall what Krimstock said?

9 A Correct.

10 Q What about the section 14-140 of
11 the New York City Administrative Code, do
12 you recall the details and the provisions
13 of that?

14 A No.

15 Q Do you recall the details and
16 provisions of the property clerk rules
17 regarding civil forfeiture matters?

18 A No.

19 Q What do you as the
20 representative of the city at an OATH
21 hearing have to prove before the oath
22 judge?

23 MR. HAZAN: Objection.

24 A I would need you to be a little
25 more specific.

1 ROUGH DRAFT

2 Q What do you have to do to keep
3 the car?

4 MR. HAZAN: Objection.

5 A I have two problems with the
6 question. The first is, I don't know
7 presently what needs to be done and
8 frankly, I don't recall what exactly I had
9 to do at the time I was handling the
10 hearings.

11 Q You don't remember?

12 A Not exactly.

13 Q What you had to prove?

14 A I know we had to prove probable
15 cause for the arrest, that's as far as I
16 can recall specifically, the rest would be
17 guessing based on a hazy memory.

18 Q Did you have to prove likelihood
19 of success in the forfeiture case?

20 MR. HAZAN: Objection.

21 A Again, the phrase sounds
22 familiar, but I can't testify for certain
23 that's what I had to prove.

24 Q Did you have to prove that there
25 was no other basis for retention of the

1 ROUGH DRAFT

2 vehicle a less restrictive means of
3 dealing with the forfeiture case and
4 holding onto the car?

5 MR. HAZAN: Objection.

6 A I don't recall. I couldn't say
7 that for sure.

8 Q According to Plaintiff's 1, is
9 it a correct statement that the City
10 retained Mr. Kapiti's car until after the
11 acquittal?

12 MR. HAZAN: Objection.

13 Q After his trial had concluded?

14 A Well, I mean I certainly can't
15 state whether or not we kept or had the
16 car at any particular date, if you want to
17 point to something in particular.

18 Q Just as far as the entries are
19 concerned?

20 MR. HAZAN: Objection.

21 A I really don't know, all I can
22 testify to -- first of all, the only thing
23 I can really testify to would be my own
24 entries and even those my independent
25 recollection would be hard to say with any

1 ROUGH DRAFT

2 certainty.

3 Q And just for the record, let's
4 clarify a couple of things. The
5 December 19th, '06 entry, it has EMR, who
6 would that be?

7 MR. HAZAN: Objection.

8 Q Do you see at the end of the
9 entry?

10 A I mean, I can't say for certain
11 who made the entry, EMR are the initials
12 of my supervisor Eva Marie Russo.

13 Q Go to the next entry dated
14 September 21st, '06, and there are --
15 after the entry there are the initials RF,
16 assuming the person whose initials they
17 are made the entry who would that be?

18 A I cannot say for sure, the only
19 thing I can say is R and F are the
20 initials of Rob Fodera.

21 Q The next entry has EV, who would
22 that be?

23 A Yeah, that I don't know.

24 Q And the August 16th, entry has
25 KD, do you know who that is?

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2 A I don't.

3 Q Other than Krimstock, the
4 property clerk rules and the
5 administrative code provisions, are there
6 any other rules which the Civil
7 Enforcement Unit uses in dealing with
8 these types of cases, in forfeiture cases
9 or retention cases, that you know of?

10 MR. HAZAN: Objection.

11 Q During the time that you were
12 there?

13 MR. HAZAN: Objection.

14 A None that I can recall.

15 MR. KESSLER: Off the record.

16 (Discussion off the record.)

17 Q Back on the record.

18 I'm going to keep the record
19 open pending the documents that we
20 requested, other than that I think I'm
21 finished for now. Thank you.

22

23 (Time noted: 1:04 p.m.)

24

25